Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended;	)	CC Docket No. 96-149
	)	
and	)	
	)	
Regulatory Treatment of LEC Provision of Interexchange Services Originating in the LEC's Local Exchange Area	)	

COMMENTS OF SPRINT CORPORATION ON SECTION VIII.D.

In an order released on August 9, DA 96-1281, the Commission extended the time for filing comments in the above-captioned docket for the following issues: (1) whether the regulatory regime for independent LECs should be altered in order for these companies to qualify for non-dominant treatment of their "in-region" interexchange service, and (2) whether the Commission should change the market definition it has previously used for assessing the presence or absence of market power of independent LECs in providing in-region, interstate, interexchange services. Sprint responds to these issues below.

The Commission notes that it is presently reviewing in the *Interexchange NPRM* the possible "eliminat[ion] [of] the separation requirements currently imposed upon independent LECs in order to qualify for nondominant treatment in the provision of interstate, domestic, interexchange services that originate outside the areas in which they control local facilities." (¶155, emphasis in original). In light of such review, and in light of the removal in the 1996 Act of the restriction on BOC provision of interLATA services, the Commission finds that it is also "important to evaluate whether [it] should continue to classify independent LECs as dominant in the provision of in-region, interstate, domestic, interexchange services, if they provide those services directly" (*id.*). In addition, the Commission tentatively finds that "it is appropriate to evaluate the continuing necessity of applying the *Competitive Carrier* requirements to the provision of those services by independent LECs" (*id.*).

In order to assist in making the above determinations, the Commission asks the parties to comment

> ...on whether, absent the *Competitive Carrier* requirements, an independent LEC would be able to use its market power in local exchange and exchange access services to disadvantage its interexchange competitors to such an extent that it will quickly gain the ability profitably to raise the price of in-

> region, interstate, domestic, interexchange services significantly above the competitive levels by restricting output (¶157).

In addition, the Commission seeks comment "on whether, absent the *Competitive Carrier* requirements, an independent LEC would be able to raise its rival's costs" (¶157).

In paragraph 126, the Commission tentatively concludes that the calls which originate in an independent LEC's in-region territory should be considered a separate geographic market from calls which originate out of the independent LEC's territory. Even assuming such a dichotomy between in-region and out-of-region geographic markets, it would seem apparent that Sprint's telcos, and similarly situated independent LECs, do not possess sufficient local market power to enable them to disadvantage their interLATA competitors in the provision of in-region, domestic interexchange service. For example, unlike the BOCs, Sprint's service territories are widely dispersed and largely rural.[1] The scale of its local operations compared to those of

---

[1] As Sprint noted in its comments in this docket filed August 15, 1996, footnote 3,

> [t]he court in *United States v. GTE Corp.* recognized that dispersion had "substantial consequences in terms of monopoly control" which meant that "[t]he effect on potential competition of a local-long distance consolidation is likely to be quite different" 603 F.Supp 730, 734 (D.D.C. 1984).

a BOC, or a combination of BOCs (*i.e.*, Bell Atlantic-NYNEX or SBC-Pacific Telesis) is quite modest.

Sprint's long distance affiliate (Sprint Communications Company L.P.) and its predecessors have now been providing long distance service nationally and internationally for over a dozen years. There is nothing to suggest that Sprint has ever sought to use its local operations to disadvantage long distance rivals by discriminating in the provision of local access within its local service territories.[2] In part, this may reflect the fact that given the relatively small and widely dispersed operations of Sprint's telcos, there is little "payoff" to be had in the long distance market as a result of any discrimination on their part. As noted, Sprint's local operations are simply too limited to realistically allow it to hinder the overall operations of its

---

[2] As Sprint also noted in its August 15, 1996 comments in this docket, "...the DOJ has twice found that Sprint's entry into the interLATA market would not cause significant harm.... First, when US Sprint was formed in 1986 and, second, when it merged with Centel in 1993" (Comments at 8-9 and n. 5). See also the Commission's decision approving the Centel merger, 8 FCC Rcd 1829, 1833 (1993) where it was noted that

> ...the Commission has established comprehensive non-structural safeguards to protect against anticompetitive conduct. As Applicants note, Sprint's local telephone companies comply with cost allocation manuals on file with the Commission and, after the merger, the Centel operations will also comply with those requirements.

major (and generally much larger) long distance competitors throughout the U.S. or even in-region.

Moreover, to the extent that regulatory protection against cross-subsidization and discrimination by independent LECs in favor of their long distance operations is still deemed to be required, it is no longer necessary to rely upon the rules set forth in *Competitive Carrier V* to accomplish this. Independent local exchange carriers providing interexchange services through affiliates pursuant to *Competitive Carrier V are* obligated to treat those affiliates under the Commission's joint cost rules as if such affiliates provided nonregulated activities (see *NPRM* in CC Docket No. 96-21, released February 14, 1996, at ¶13).

Sprint reads the Commission's joint cost rules to require an independent LEC marketing its own interexchange service to allocate the costs and revenues of such interexchange service to nonregulated activities and thereby separate those costs from its local service operations. Sprint also reads these rules to require the independent LEC to charge any tariffed local access or local service that it provides to the nonregulated

activity at the tariffed rates and credit the revenue to regulated activities.[3]

Sprint believes that the requirement that a nonregulated activity take local service only at tariffed rates can, and should, be read to preclude the sharing of the switching and transmission facilities used to provide local service with any interexchange service. Accordingly, it would seem implicit that the interexchange service would have to obtain the use of these local switching and transmission facilities pursuant to local access tariffs and that the requirement that service be taken under tariff cannot be avoided by any "sharing" of local facilities.[4]

If Sprint's reading is correct here, there is no further need to continue the separation requirements in *Competitive Carrier V* because these requirements have now been largely incorporated into the Commission's cost allocation rules. On the

---

[3] Section 64.901(b)(1) provides that

> "[t]ariffed services provided to a nonregulated activity will be charged to the nonregulated activity at the tariffed rates and credited to the regulated revenue account for that service."

[4] Similarly, if unbundled network elements are provided to interexchange carriers, such elements should be provided under tariff and the same price allocated to an independent carrier's nonregulated (interexchange) activity as is charged unaffiliated providers.

other hand, if this reading is incorrect, the Commission may wish to provide for an explicit prohibition against the sharing of switching and transmission plant used to provide local service by interexchange services. Such a prohibition could be continued in *Competitive Carrier V*, but it would seem more appropriate to accomplish such prohibition by modifying the Allocation of Cost rules in Section 64.901.

In any case, the only effective change proposed from the existing *Competitive Carrier V* requirements is that the independent LEC can provide interLATA service directly, rather than through an affiliate. But, the affiliate in *Competitive Carrier V* "...is not necessarily structurally separated from an exchange telephone company in the sense ordered in the *Second Computer Inquiry*...", 98 F.C.C. 2d 1191, 1198 (1984), except insofar as it must meet the three obligations specified in that decision to keep separate books of account, to avoid sharing switching and transmission plant with the local telephone company and, to the extent it uses the local telephone company's service, to acquire such service under tariff. Given that these three separation requirements will still be met, and given the fact that the requirement for an "affiliate" would appear to have no

special meaning apart from these requirements, the relaxation proposed here should be regarded as quite modest.

Thus, Sprint's local operations -- the local operations of an independent LEC -- would still be considered dominant and would still be required to tariff both local service and local access. Sprint's telcos would also be required to provide these services on a nondiscriminatory basis. However, bundled local and long distance service and bundled local and nonregulated services should be treated as nondominant service since the underlying local service (where any market power resides) is available on a nondiscriminatory basis.

This situation is analogous to that which exists for enhanced or information services which are currently not subject to Title II regulation. So long as the underlying local or exchange access service is available at tariffed rates, and on a nondiscriminatory basis, there is no regulatory need to subject the combined service to dominant carrier regulation.

WHEREFORE, Sprint respectfully requests for the reasons set forth herein that the Commission eliminate the present affiliate separation requirements for independent LECs contained in *Competitive Carrier V*, and, if deemed necessary, clarify that interexchange activities may not share local exchange switching

and transmission facilities and must, instead, take local service and local access pursuant to tariff.

Respectfully submitted,

SPRINT CORPORATION

Leon M. Kestenbaum
Jay C. Keithley
Kent Y. Nakamura
Norina T. Moy
1850 M St., N.W., 11th Floor
Washington, D.C. 20036
202-828-7442

August 29, 1996

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **COMMENTS OF SPRINT CORPORATION ON SECTION VIII.D.** was sent by hand or by United States first-class mail, postage prepaid, on this the 29th day of August, 1996 to the below-listed parties:

Regina Keeney, Chief*
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 500
Washington, D.C. 20554

Richard Welch*
Chief, Policy & Planning
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

International Transcription*
Service
Room 246
1919 M St., N.W.
Washington, D.C. 20554

Janice Myles*
Common Carrier Bureau
Federal Communications Commission
1919 M St., N.W., Room 544
Washington, D.C. 20554

Christine C. Jackson

August 29, 1996

* **DELIVERED BY HAND**